



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 121004516-3064-01]

RIN 0648-BC64

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;  
Reef Fish Fishery of the Gulf of Mexico; Gag Management Measures  
in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National  
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement management measures described in a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). If implemented, this rule would (1) establish a closure date for the 2013 recreational sector for gag harvest based on the projected annual catch target (ACT), and (2) reduce the geographic extent of the recreational shallow-water grouper (SWG) fixed seasonal closure, which are in place to prevent overfishing of gag, and to reduce fishing pressure on other SWG species. The reduction in the geographic extent of the closure still would provide some spawning season

protection for several SWG species, but provides a better opportunity for the recreational sector to achieve optimum yield (OY) from the stocks in the SWG complex in the Gulf of Mexico (Gulf). This proposed rule is intended to help achieve OY for the Gulf gag and other SWG resources and prevent overfishing from the stocks in the SWG complex.

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by "NOAA-NMFS-2013-0012", by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0012](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0012), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.),

confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the regulatory amendment, which includes an environmental assessment, regulatory impact review, and Regulatory Flexibility Act analysis, may be obtained from the Southeast Regional Office Web Site at <http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm>.

FOR FURTHER INFORMATION CONTACT: Peter Hood, Southeast Regional Office, NMFS, telephone 727-824-5305; email: [Peter.Hood@noaa.gov](mailto:Peter.Hood@noaa.gov).

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

#### Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, OY from federally managed fish stocks. The reauthorized Magnuson-Stevens Act, as amended through January

12, 2007, requires the councils to establish annual catch limits (ACLs) for each stock/stock complex and accountability measures (AMs) to ensure these ACLs are not exceeded. This proposed rule addresses these requirements by (1) establishing a closure date for the recreational sector for gag harvest based on when the ACT is projected to be reached, rather than closing on October 31, 2013, under current regulations; and (2) modifying the geographic extent of the recreational SWG fixed seasonal closure, from February 1 through March 31, each year, to permit recreational SWG fishing within Federal waters shoreward of the 20-fathom boundary during the closure. In the Gulf, SWG means gag, red grouper, black grouper, scamp, yellowfin grouper, and yellowmouth grouper.

#### Recreational Gag Fishing Season

Gulf gag is overfished and the stock is currently in a rebuilding plan. The 10-year rebuilding plan was implemented through Amendment 32 to the FMP (77 FR 6988, February 20, 2012). Pursuant to the rebuilding plan, in 2013, the recreational ACL is scheduled to increase from 1.232 million lb (0.559 million kg) to 1.495 million lb (0.678 million kg), gutted weight, and the ACT is scheduled to increase from 1.031 million lb (0.468 million kg) in 2012 to 1.287 million lb (0.584 million kg), gutted weight. Preliminary estimates indicate the recreational sector landings did not exceed the 2012 ACL of 1.232 million lb

(0.559 million kg), gutted weight, which would allow the ACL and ACT to be increased in 2013, in accordance with the rebuilding plan.

The 2012 recreational gag fishing season was July 1 through October 31. To set a 2013 recreational gag fishing season, the Council evaluated seasons beginning at different times. Fishermen had expressed interest in being able to fish for gag during other times of the year to accommodate regional and seasonal differences in gag fishing. As a result, several alternatives were developed to either move the start of the recreational gag fishing season to a different time, or to split the season into two or three sub-seasons. However, moving the season to times when there is greater demand for gag fishing would reduce the total number of days available to fish. Therefore, to provide additional fishing days, the Council added an option to reduce the bag limit from 2 to 1 fish during the recreational gag fishing season.

After evaluating alternatives, the Council selected a recreational gag fishing season beginning on July 1, 2013, and closing when the ACT is projected to be reached, rather than closing on October 31, 2013, which is the current regulation. The Council also decided to maintain the 2-fish bag limit during the recreational gag fishing season rather than reduce the bag limit to 1 fish because the number of projected additional

fishing days to the 2013 season was small (less than 2 weeks). If implemented, each year, NMFS would project when the ACT is expected to be reached, and publish the date for the closure of the recreational sector for gag harvest in the Federal Register. Given a 2013 ACT of 1.287 million lb (0.584 million kg), gutted weight, and assuming compatible state regulations, preliminary NMFS projections indicate the recreational gag fishing season would remain open until sometime between November 11 and December 3, 2013. A 2013 closure date for the recreational sector for gag harvest would be set in the final rule. This would allow landings data for the recreational sector, through the end of the 2012 recreational gag fishing season (October 31), to be used for projecting the 2013 season length.

The final closure date for the 2013 season may be earlier or later than closure dates described above because it is contingent on catches reported in 2012 and state consistency with regulations existing in 2013. For example, in 2012, four Gulf coast counties in Florida had recreational gag fishing seasons in state waters that were inconsistent with the 2012 Federal season. All other Gulf coast counties were consistent with the season for Federal waters. If Florida chooses to repeat these seasons in 2013, then the effect of any inconsistent seasons on gag harvest would need to be factored into projections of how long the Federal season can be open

based on the ACT. Furthermore, accountability measures, specified at 50 CFR part 622.49(a)(4)(ii), state that if landings reach, or are projected to reach, the ACL for that fishing year, NMFS will close the recreational sector for gag harvest for the remainder of the fishing year. Therefore, NMFS could close the recreational sector for gag harvest prior to reaching the final closure date (including the current closure date of October 31, as provided in 50 CFR 622.34(v)), if landings reach, or are projected to reach the ACL for that fishing year.

#### Recreational SWG Fixed Seasonal Closure

The current recreational SWG fixed seasonal closure, from February 1 through March 31, each year, was part of a suite of recreational measures implemented through Amendment 30B to the FMP (72 FR 17603, April 16, 2009) designed to achieve target harvest levels for both red grouper and gag, and to end overfishing of gag. Part of the rationale for selecting the recreational SWG fixed seasonal closure, from February 1 through March 31, each year, was to protect spawning of SWG species, and in particular gag, which spawn primarily along the 40-fathom break in the eastern Gulf. Because the current and proposed recreational gag fishing season opens July 1, well after peak gag spawning in February and March, gag spawning is protected by both the closure of the recreational sector for gag harvest and

the current recreational SWG fixed seasonal closure. The recreational SWG fixed seasonal closure, from February 1 through March 31, also covers the spawning periods of some of the other SWG species and thus provides a biological benefit to these species. Like gag, spawning for many of these SWG species occurs in offshore rather than near-shore waters; thus the modified geographic extent of the recreational SWG fixed seasonal closure proposed in this rule may continue to provide some protection for these SWG species with spawning periods during the proposed closure. In addition, red, black, and other SWG are managed with ACLs and AMs to prevent overfishing from occurring.

The Council evaluated several alternatives to the recreational SWG fixed seasonal closure, including shortening, shifting, and repealing the closure. To continue protections for gag and other SWG spawning, the Council preferred to modify the geographic extent of the February 1 through March 31 recreational SWG fixed seasonal closure, to only apply to Federal waters seaward of the 20-fathom boundary. If implemented, this modification would continue to provide protection for spawning gag as well as for other SWG species that spawn in waters deeper than 20 fathoms in February and March. The coordinates of the boundary would follow the 20-fathom reef fish bottom longline boundary from the Florida Keys



north and west to Cape San Blas, as specified in Table 1 of Appendix B to 50 CFR Part 622. Because the longline boundary moves out to 50 fathoms west of Cape San Blas, new 20-fathom boundary coordinates would be established through this rule for waters off Cape San Blas to the U.S. and Mexico border.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA (AA), has determined that this proposed rule is consistent with the regulatory amendment, the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

If implemented, this proposed rule would: (1) close the recreational sector for gag harvest based on when the ACT is projected to be reached, rather than closing on October 31, 2013, under current regulations; and (2) modify the geographic

extent of the recreational SWG fixed seasonal closure, from February 1 through March 31, each year, to permit recreational SWG fishing within Federal waters shoreward of the 20-fathom boundary during the closure. The purpose of this proposed rule is to prevent overfishing and achieve OY from the stocks in the SWG complex. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This rule, if implemented, is expected to directly affect 1,363 vessels that possess a valid or renewable Gulf reef fish for-hire permit. A renewable permit is an expired permit that may not be actively fished, but is renewable for up to 1 year after expiration. The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. Although the Gulf reef fish for-hire permit does not distinguish between charterboats and headboats, an estimated 69 headboats operate in the Gulf. As a result, an estimated 1,294 charterboats and 69 headboats in the Gulf would be expected to be directly affected by this proposed rule. The average charterboat is estimated to earn approximately \$77,000 (2010 dollars) in annual revenue, and the average headboat is estimated to earn approximately \$234,000 (2010 dollars).

No other small entities that would be expected to be directly affected by this proposed rule have been identified.

The Small Business Administration has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in the for-hire fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$7.0 million (NAICS code 713990, recreational industries). Based on the average revenue estimates provided above, all for-hire vessels expected to be directly affected by this proposed rule are determined for the purpose of this analysis to be small business entities.

This rule, if implemented, would change the closure date for the recreational sector for gag harvest and the geographic extent of the recreational SWG fixed seasonal closure. The proposed closure date for the recreational sector for gag harvest would be expected to increase the number of charterboat individual angler trips targeting gag Gulf-wide by 770-2,464 trips, where a "trip" is based on each individual angler rather than the charterboat as a whole. Angler trips are used as the metric of analysis instead of vessel trips because species target information is collected at the angler level and not at the vessel level. The estimated producer surplus (PS), which is used as a proxy for vessel profit, of a charterboat angler trip is \$145.63 (2010 dollars). The increase in the number of

charterboat individual angler trips targeting gag expected to occur as a result of the proposed change in the recreational gag fishing season would be expected to increase the PS for all affected charterboats combined by approximately \$112,000-\$359,000 (770-2,464 trips times \$145.63 per trip; 2010 dollars). During the 2007-2011 period, the Gulf charterboat fleet averaged approximately 765,200 angler trips per year, of which an average of approximately 14,600, or less than 2 percent, targeted gag. These trips targeting gag generated approximately \$111 million in PS per year for the entire fleet. The estimated increase in PS expected to result from the proposed closure date for the recreational sector for gag harvest would, therefore, be expected to increase the total PS received by charterboats by less than 1 percent (approximately 0.1-0.3 percent). Allocated across all charterboats (1,294 vessels), the estimated change in PS would result in an increase of approximately \$77-\$277 (2010 dollars) per vessel. Although some charterboats would be expected to be more actively engaged in the harvest of gag than others, these results indicate that the proposed closure date for the recreational sector for gag harvest would be expected to have a minor economic impact on the profit of charterboats.

Comparable information for Gulf headboats is not available because target data for headboat trips are not collected. However, gag accounts for less than 4 percent of the total

pounds of all species recreationally harvested by headboats, whereas gag accounts for approximately 13 percent of the total pounds recreationally harvested by charterboat anglers despite the low rate (less than two percent of total trips) of gag target effort by charterboat anglers. The higher proportion of gag harvest relative to total harvest for charterboats compared to headboats, despite the low rate of gag target effort by charterboat anglers, suggests that gag target effort by headboat anglers is similarly low. As a result, the proposed closure date for the recreational sector for gag harvest would be expected to result in a small change in the number of headboat angler trips taken and, as a result, have a minor economic impact on the profit of headboats.

The proposed change in the geographic extent of the recreational SWG fixed seasonal closure would be expected to result in a minor economic impact to for-hire small businesses. A fixed seasonal closure applicable to the recreational sector for gag, black grouper, and red grouper of some duration has been in effect since 2006 and was expanded to include all SWG species in 2010. As a result, examination of data prior to 2006 is required to provide insights into the possible economic effects of the proposed change in the geographic extent of the recreational SWG fixed seasonal closure.

During 2004-2005, approximately 6,300 trips are estimated to have been taken each year during February and March by charterboat anglers targeting SWG species. Among the species in the SWG complex, gag is the most commonly targeted species. Of the approximately 6,300 charterboat angler trips targeting SWG taken each year during these months, approximately 4,700 of these trips, or approximately 74 percent, targeted gag. NMFS notes that these results should not be compared with previous discussion of the low importance of gag target effort to charterboat anglers overall (less than 2 percent of total target trips) because that discussion pertained to annual target effort for all species; the current discussion pertains only to target effort in February-March, and only to SWG species. As a result, of the approximately 6,300 trips targeting SWG that occurred each year during February-March, only approximately 1,600 trips targeted SWG species other than gag. During these two years, 2004-2005, approximately 765,300 charterboat angler trips were taken each year. Thus, the number of trips that targeted a SWG species other than gag during February-March represented approximately 0.2 percent of all charterboat angler trips taken over the entire year.

The proposed change in the geographic extent of the recreational SWG fixed seasonal closure would eliminate the recreational SWG fixed seasonal closure in Federal waters

shoreward of the 20-fathom boundary. Estimates of recreational target effort by water depth are not available and the estimates of angler effort provided above, which encompass effort throughout the Gulf, cannot be disaggregated to match the geographic parameters of the proposed rule. As a result, because some SWG target effort may occur seaward of the 20-fathom boundary, estimates of the expected economic effects of the proposed change in the geographic extent of the recreational SWG fixed seasonal closure based on the angler target information discussed above would be expected to be an upper bound. Based on the information provided above, because the recreational harvest of gag would continue to be prohibited seaward of the 20-fathom boundary, the proposed change in the geographic extent of the recreational SWG fixed seasonal closure would be expected to result in a maximum increase of approximately 1,600 charterboat angler trips, or approximately 0.2 percent of normal charterboat angler trips taken over the year. Based on this number of charterboat angler trips, these trips would be expected to result in an increase in the PS to the Gulf charterboat fleet by approximately \$235,000 (1,600 trips times \$145.63 per trip; 2010 dollars), or approximately 0.2 percent of total PS received by charterboats. Allocated across all charterboats, the estimated change in PS would result in an increase of approximately \$182 (2010 dollars) per vessel.

Similar to the discussion on the expected effects of the proposed closure date for the recreational sector for gag harvest, although some charterboats would be expected to be more actively engaged than others in the harvest of SWG species other than gag, these results indicate that the proposed change in the geographic extent of the recreational SWG fixed seasonal closure would be expected to have a minor economic impact on the profit of charterboats.

Similar to the discussion of the expected effects of the proposed closure date for the recreational sector for gag harvest, estimates of the expected effects of the proposed change in the geographic extent of the recreational SWG fixed seasonal closure on headboats cannot be calculated with available data, because target data for headboat trips are not collected. However, because the proposed change would only affect the harvest of SWG species other than gag, which is the most commonly targeted SWG species, and would affect fishing opportunities for only a small portion of the year, the proposed change in the geographic extent of the recreational SWG fixed seasonal closure would be expected to result in only a small increase in the number of headboat angler trips taken. As a result, this proposed change in the geographic extent would be expected to have only a minor economic impact on the profit of headboats.



In summary, the proposed rule, if implemented, would not be expected to have a significant economic effect on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule does not establish any new reporting, record-keeping, or other compliance requirements.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: February 15, 2013.

---

Alan D. Risenhoover, Director, Office of Sustainable Fisheries,  
performing the functions and duties of the Deputy Assistant Administrator for  
Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.34, paragraphs (u) and (v) are revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

\* \* \* \* \*

(u) Seasonal closure of the recreational sector for shallow-water grouper (SWG). The recreational sector for SWG, in or from the Gulf EEZ, is closed each year from February 1 through March 31, in the portion of the Gulf EEZ seaward of rhumb lines connecting, in order, the points in the following table. During the closure, the bag and possession limit for SWG in or from the Gulf EEZ seaward of the following rhumb lines is zero.

Point	North lat.	West long.
1	24°48.0'	82°48.0'
2	25°07.5'	82°34.0'
3	26°26.0'	82°59.0'
4	27°30.0'	83°21.5'
5	28°10.0'	83°45.0'
6	28°11.0'	84°00.0'
7	28°11.0'	84°07.0'
8	28°26.6'	84°24.8'

9	28°42.5'	84°24.8'
10	29°05.0'	84°47.0'
11	29°02.5'	85°09.0'
12	29°21.0'	85°30.0'
13	29°27.9'	85°51.7'
14	29°45.8'	85°51.0'
15	30°05.6'	86°18.5'
16	30°07.5'	86°56.5'
17	29°43.9'	87°33.8'
18	29°43.0'	88°18.5'
19	At State/EEZ line, follow State/EEZ line to point 20	88°56.0'
20	At State/EEZ line	89°28.4'
21	29°02.0'	89°45.5'
22	28°32.7'	90°21.5'
23	28°24.8'	90°52.7'
24	28°42.3'	92°14.4'
25	28°34.2'	92°30.4'
26	28°27.6'	95°00.0'
27	28°20.0'	95°06.9'
28	28°02.2'	96°11.1'

29	27°46.5'	96°38.1'
30	27°15.0'	97°00.0'
31	26°45.5'	97°01.4'
32	At EEZ	96°51.0'

(v) Seasonal closure of the recreational sector for gag.

The recreational sector for gag, in or from the Gulf EEZ, is closed from January 1 through June 30 and November 11 through December 31, each year. During the closure, the bag and possession limit for gag in or from the Gulf EEZ is zero.

[FR Doc. 2013-03980 Filed 02/20/2013 at 8:45 am; Publication Date: 02/21/2013]